



January 25, 2001

Mr. Leslie R. Sweet
Legal Advisor
Dallas County Sheriff's Department
Frank Crowley Courts Building
133 N. Industrial Blvd., LB 31
Dallas, Texas 75207-4313

OR2001-0297

Dear Mr. Sweet:

You ask whether certain information is subject to required public disclosure under the Public Information Act, chapter 552 of the Government Code (the "Act"). Your request was assigned ID# 143582.

The Dallas County Sheriff's Department (the "department") received a request for nineteen categories of information. You claim that some of the requested information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and have reviewed the information you submitted.

Initially, we address the department's obligations with regard to the information that you do not seek to withhold from the requestor. The Act requires a governmental body to promptly produce requested information for inspection, duplication, or both. *See* Gov't Code § 552.221; Open Records Decision No. 664 (2000). The requestor has ten days in which to complete the examination of the requested information and, on written application, is entitled to additional 10-day examination periods. *See* Gov't Code § 552.222. In responding to a request for information, the governmental body must make a good-faith effort to relate the request to the information that it holds or to which it has access. *See* Open Records Decision Nos. 563 at 8 (1990), 561 at 8-9 (1990), 555 at 1-2 (1990), 534 at 2-3 (1989). If what information is requested is not clear, the governmental body may ask the requestor to clarify the request. *See* Gov't Code § 552.222(b). Furthermore, if a large amount of information is requested, the governmental body may discuss with the requestor how the scope of a request might be narrowed, but in doing so may not inquire into the purpose for which the information will be used. *Id.*

Next, we address the department's failure to comply with section 552.301 of the Government Code in asking for this attorney general decision. Under section 552.301(b), a governmental body that seeks to withhold requested information from disclosure "must ask for the attorney general's decision and state the exceptions that apply . . . not later than the 10th business day after the date of receiving the written request [for information]." Gov't Code § 552.301(b). Section 552.302 of the Government Code provides that "[i]f a governmental body does not request an attorney general decision as provided by Section 552.301 . . . the information requested in writing is presumed to be subject to required public disclosure and must be released unless there is a compelling reason to withhold that information." Gov't Code § 552.302.

In this instance, you inform this office that you received the written request for information on October 12, 2000. Your request for this attorney general decision was mailed on November 13, 2000. Thus, the department did not comply with section 552.301(b) in asking for this decision, and therefore the information requested in writing is presumed to be subject to required public disclosure, unless there is a compelling reason to withhold any of that information from the public. Gov't Code § 552.302; *see also Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 380-81 (Tex. App.--Austin 1990, no writ).

You submitted to this office records that you describe as "an active Law Enforcement investigative file." You inform us that the department and the Dallas County District Attorney's Office "state that the release of said file would compromise the investigation and/or prosecution of this case." You assert that "Law Enforcement Agencies do not have to release active investigation files[.]" Although you do not raise section 552.108 of the Government Code, the "law enforcement exception," you apparently are relying on section 552.108(a)(1), which protects "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . release of the information would interfere with the detection, investigation, or prosecution of crime." Section 552.108 is a discretionary exception to disclosure that protects the interests of the governmental body and may be waived. *See* Gov't Code § 552.007; Open Records Decision No. 177 (1977) (construing statutory predecessor). Therefore, your claim under section 552.108 is not a compelling reason that overcomes the presumption under section 552.302 that the submitted information must be released. *See also* Open Records Decision No. 630 at 2-3 (1994). Therefore, except as further noted, you must release the submitted information to the requestor.

The operation of section 552.302 can be rebutted by a demonstration that the requested information is confidential under section 552.101 of the Government Code in conjunction with some other source of law or that the interests of third parties are at stake. *See* Open Records Decision No. 630 at 3 (1994). In this instance, the submitted records contain criminal history record information ("CHRI") that is confidential under section 552.101 in

conjunction with federal and Texas law.¹ Federal regulations prohibit the release of CHRI maintained in state and local CHRI systems to the general public. *See* 28 C.F.R. § 20.21(c)(1) (“Use of criminal history record information disseminated to noncriminal justice agencies shall be limited to the purpose for which it was given.”) and (c)(2) (“No agency or individual shall confirm the existence or nonexistence of criminal history record information to any person or agency that would not be eligible to receive the information itself.”). Section 411.083 of the Government Code provides that any CHRI maintained by the Department of Public Safety (the “DPS”) is confidential. Gov’t Code § 411.083(a). Similarly, CHRI obtained from the DPS pursuant to statute also is confidential and may be disclosed only in very limited instances. *Id.* § 411.084; *see also id.* § 411.087 (restrictions on disclosure of CHRI obtained from DPS also apply to CHRI obtained from other criminal justice agencies). Therefore, you must withhold the criminal history record information that we have marked under section 552.101 in conjunction with the foregoing provisions of federal and state law.

A social security number may be confidential under section 552.101 in conjunction with 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I), *if the social security number was obtained or is maintained by a governmental body pursuant to any provision of law enacted on or after October 1, 1990*. *See* Open Records Decision No. 622 at 2-4 (1994). It is not apparent to this office that any social security number in the submitted records is confidential under section 405(c)(2)(C)(viii)(I) of the federal law. You have cited no law, nor are we aware of any law enacted on or after October 1, 1990, that authorizes the department to obtain or maintain a social security number. Therefore, we have no basis for concluding that any social security number contained in the submitted records was obtained or is maintained pursuant to such a statute and is therefore confidential under the federal law. We caution you, however, that chapter 552 of the Government Code imposes criminal penalties for the release of confidential information. *See* Gov’t Code §§ 552.007, .352. Therefore, prior to releasing any social security number, the department should ensure that it was not obtained and is not maintained pursuant to any provision of law enacted on or after October 1, 1990.

Lastly, we also note that the submitted records contain motor vehicle record information that is governed by section 552.130 of the Government Code. Section 552.130 provides in relevant part:

(a) Information is excepted from [required public disclosure] if the information relates to:

(1) a motor vehicle operator’s or driver’s license or permit issued by an agency of this state;

¹Section 552.101 excepts from required public disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.”

(2) a motor vehicle title or registration issued by an agency of this state; or

(3) a personal identification document issued by an agency of this state or a local agency authorized to issue an identification document.

Gov't Code § 552.130(a). The department must withhold motor vehicle record information, including a vehicle identification number or Texas license plate or driver's license number, in accordance with section 552.130.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

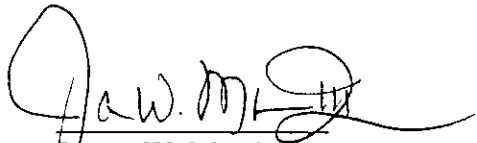
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read "J.W. Morris, III". The signature is fluid and cursive, with a large initial "J" and "W".

James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/er

Ref: ID# 143582

Encl: Submitted documents

cc: Ms. Linda Sorrells
Attorney at Law
400 S. Zang Blvd., Suite 600
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(w/o enclosures)